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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA .  
Case No. 2:14-mj-03225-3BC  
vs. .  
Newark, New Jersey  
WIESLAW KOZLOWSKI, .  
November 19, 2014  
Defendant. .  
. . . . .

TRANSCRIPT OF BAIL MOTION HEARING  
BY THE HONORABLE JAMES B. CLARK  
UNITED STATES MAGISTRATE JUDGE

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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

Proceedings

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1 (Commencement of Proceedings at 12:43:49 p.m.)

2 THE COURT: All right. We're here for a bail hearing  
3 in the matter of the extradition of Wieslaw Kozlowski,  
4 magistrate number 14-3225 (jbc). Mr. Kozlowski, I see you have  
5 an interpreter here so I would ask my deputy to first swear the  
6 interpreter for this proceeding.

7 THE CLERK: Please state your name for the record.

8 THE INTERPRETER: -- Kipiniak, that's  
9 K-I-P-I-N-I-A-K, Polish Interpreter.

10 THE COURT: All right. And now that we have the  
11 interpreter sworn, why don't we have appearances of counsel.

12 MR. HERRING: Justin Herring for the United States  
13 and on behalf of the Republic of Poland, Your Honor. Good  
14 afternoon.

15 THE COURT: Good afternoon.

16 MR. ILASZ: And Livius Ilasz on behalf of the  
17 defendant, I mean the person being extradited, Wieslaw  
18 Kozlowski.

19 THE COURT: Good afternoon.

20 MR. ILASZ: Good afternoon, Your Honor.

21 THE COURT: Well Mr. Ilasz, this is your application.  
22 And I have a letter that you sent to me. I have reviewed the  
23 letter. It's dated November 14, 2014. I would also just say  
24 for the record that I have a submission from the government  
25 dated November 17, 2014. I have reviewed that as well. You're

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1 more than welcome now if you would like to add anything you  
2 want to what you've said in the papers. I'll be happy to hear  
3 you.

4 MR. ILASZ: Yes, Your Honor. I sent in the paper. I  
5 understand I was limited to five pages. You asked me not to  
6 exceed. The government exceeded. I could write more about the  
7 case, but tried to be very concise.

8 Your Honor, this is the case of Polish government  
9 trying to extradite my client for a crime, alleged crime  
10 committed about 20 years ago. We know that they knew the  
11 client is in the United States from 2005. They have done  
12 nothing through 2010. And as I -- the case of the defendant --

13 THE COURT: Kapoor?

14 MR. ILASZ: Yes, Kapoor, the court stated that it is  
15 too bad that there is no agency on the part of the government  
16 seeking extradition of his citizen, I mean citizen. And this  
17 identical case here. Even the Polish government was waiting  
18 not three years, but five years.

19 Without the proceedings being implemented in Poland.  
20 They were just waiting. This is the first thing. I agree  
21 mostly with the government that there's presumption of no bail.  
22 But unless there are special circumstances. And I understand  
23 the trial judge has the power, has the discretion to find a  
24 special circumstances. And that's why I'm here.

25 THE COURT: Well you would agree that there's two

1 steps to it really, right? We have to determine that there's  
2 no risk of flight, or that there's not a substantial risk of  
3 flight and that there's no danger to the community. And then  
4 after that's determined we would determine whether there are  
5 special circumstances that would justify release.

6 MR. ILASZ: That's correct. And I will talk about  
7 both. Before I will do that I want to let this Court know that  
8 I spoke with the prosecutor today at 2:00 in the morning and at  
9 6:00 in the morning.

10 THE COURT: The prosecutor in Poland?

11 MR. ILASZ: In Poland.

12 THE COURT: All right.

13 MR. ILASZ: Who is handling the case. Who was  
14 interviewing my client initially. His name is Joseph Morafco  
15 (phonetic). I can spell it for the record, but this is the  
16 prosecutor who interviewed my client 20 years ago and who is  
17 from the case goes back.

18 He said that he's agreed to the plea bargain of  
19 50,000 --, that's about \$60,000 to be paid to the government as  
20 a restitution and probation. We had a disagreement I have to  
21 tell this Court about the process of --.

22 He says he wants him there for a new pleading. I  
23 quoted to him, this is another supreme court of Poland, it can  
24 be done in writing. And I will bring to that attention of the  
25 Polish courts about our disagreement.

1 But the deal is there. So if he's extradited to  
2 Poland or he deal with the Polish authorities he will not be  
3 coming here to job. That's a good thing, a goodness for my  
4 client.

5 Now my client has been here for the past 20 years.  
6 He has been living in New Jersey as I described in the papers.  
7 He has some personal problems. He'd been drinking. He didn't  
8 commit any crime and he pulled out himself from the trial of  
9 drinking by attending AA classes and now I know he's helping  
10 others. He is going to Church every Sunday. He's the leader  
11 of the prayer.

12 His family and the -- wife, his daughter, and his son  
13 here later to testify about their father, about a loving  
14 husband. And about his binds to become --.

15 Judge, if he is about to flee the country or he want  
16 to flee, the only place he can flee is Poland where he is  
17 fighting. He doesn't want to leave. He wants to stay here.  
18 There are ties. He's employed two people who are relying on  
19 him for their income. He has a small company construction  
20 company and he has been doing this for 20 years.

21 There was no crime committed over except what he's  
22 alleged charged in Poland. This is not an excuse, Your Honor.  
23 But I've been a Polish attorney for the past 16 years, here  
24 American attorney for 20 years but in Poland for 16 years.  
25 During the transition period from -- to -- it was a common

1 thing that any contraband instead of being destroyed because of  
2 the country being in very poor state, instead of being  
3 destroyed was taken by the people who confiscate it. This is  
4 why in Russia, in Eastern Europe this was a proper, the  
5 culture. It's not an excuse for him. But this is the way the  
6 business was done. They didn't want to destroy anything. They  
7 want to use it.

8 If he was in Poland, Your Honor, he would not be  
9 sitting here incarcerated. The bail would be available to him  
10 immediately and because in Poland this is classified as a  
11 misdemeanor he would be eligible to walk on his own  
12 recognizance without being incarcerated or even pay the bail.

13 In Poland a felony is anything that the minimum  
14 penalty is three years. He already had a minimum penalty from  
15 three months to five years. That's the bracket. So this is  
16 not a felony.

17 Because of the nature of the crime I don't think he  
18 can be also the -- to the community. It's not a violent crime.  
19 He has been a police officer for a certain period of time. He  
20 allegedly --

21 THE COURT: I've not seen anything that indicates  
22 that he's a potential danger to the community. Mr. Herring, do  
23 you even contend that?

24 MR. HERRING: No. We don't believe he -- it is no  
25 indication he's a danger to the community, Your Honor.

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1 THE COURT: All right.

2 MR. ILASZ: Judge, if you want the witnesses to  
3 testify I see -- okay. I discussed in this memorandum the case  
4 which, and I'm citing Regarding Extradition of Harshbarger.  
5 Bail was granted under restrictive conditions. It was  
6 identical situation. The risk of flight -- the inter alia,  
7 married, two children, and obtains what appears to be a sexual  
8 abuse and the bail was granted.

9 And I understand the position of the government, the  
10 potential embarrassment to the Polish government if he's  
11 released today on bail and he escapes.

12 THE COURT: Well I would think it would be an  
13 embarrassment to the United States government --

14 MR. ILASZ: Yes. That's what I meant.

15 THE COURT: -- for not turning somebody over to a  
16 party with whom they have a treaty.

17 MR. ILASZ: Yes. But if you look at this man about  
18 his history, about the family ties, not -- mistake, I mean  
19 allegedly mistake he made in his life, we can put the -- of his  
20 --. He can report every other day to the police precinct. We  
21 can make his bail very restrictive and burdensome as far as his  
22 -- officer.

23 But I believe there are special circumstances that  
24 justify your discretion to let him go for the time of the  
25 proceedings. And I --, Your Honor. I could explain.

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1 THE COURT: Mr. Herring.

2 MR. HERRING: Thank you, Your Honor. Let me just  
3 note at the beginning here that this has been an educational  
4 experience for me since I was assigned this case last week  
5 because this is a pretty sua generous type of proceeding in  
6 terms of everything from the bail to the ultimate extradition  
7 hearing.

8 And let me just drop -- make a quick comment, Your  
9 Honor. It's the government's request, and I thought -- this  
10 morning, it was not for the purposes of today's bail hearing.  
11 I was just laying out the law as it applies to the extradition  
12 hearing that we would request to have an extradition hearing  
13 scheduled at the earliest convenience because that is the I  
14 guess next, and for purposes of the information or the evidence  
15 the Court needs to gather.

16 The last step before the Court can make a  
17 determination on the extradite-ability of Mr. Kozlowski.  
18 Assuming that there's not consent or something else between now  
19 and then. And you know this is unusual in some ways because in  
20 my, certainly in my role representing the government I'm acting  
21 in a much more limited capacity than I would be at any other  
22 bail hearing in any criminal matter, which is what I'm  
23 accustomed to.

24 But that said, I think there's a pretty substantial  
25 body of law, statutory followed by case law that lays out the



1 circumstances here. I think that, you know, and I should  
2 fairly concede here that I think, we would have to see the bail  
3 package, but if Mr. Kozlowski was U.S. citizen who was arrested  
4 for this crime in New Jersey and a long time resident of New  
5 Jersey I don't know that the government would be opposing a  
6 request for bail. And I think it's because of the special  
7 circumstances and the law and all of the reasons underlying the  
8 process of extradition that I am here to oppose this motion for  
9 bail.

10 I should also note I learned an hour ago, Your Honor,  
11 that there is an ICE detainer for Mr. Kozlowski. I was  
12 informed by the materials that he is not in the United States  
13 legally according to the information they got from ICE. And  
14 they have a detainer on file from ICE, I think it was filed  
15 recently. So it's my understanding that even if he were  
16 released today the maritals would transfer him to ICE custody  
17 in that he does not have any, he doesn't have legal permission  
18 to be in the United States.

19 And I think that -- so I think certainly to the  
20 extent that it's the goal of Mr. Kozlowski to be released or to  
21 get back to work, Your Honor, I think that's probably not going  
22 to happen either way.

23 I should first note, Your Honor, that I think there  
24 is a sense, that there is a risk of flight here given that Mr.  
25 Kozlowski is already a fugitive from his native country, his

1 home country. I believe the country of his birth and the  
2 country where he was raised. And he chose to, you know, leave  
3 that country in light of this offense once. It does create, it  
4 has to create a certain suspicion of concern that he would be  
5 willing to do that again even if it was just to relocate within  
6 the United States. You know, and I think if we were, as I  
7 said, if it were not an extradition proceeding you might weigh  
8 that against the bail package.

9 But when you also combine that the other independent  
10 stuff here, which is the need, the burden on Mr. Kozlowski to  
11 show special circumstances I think that weighs strongly in  
12 favor of not granting bail.

13 And I won't review everything that's in the memo.  
14 I'm sure, as you mentioned Your Honor, you're already familiar  
15 with in terms of the case law and really the reasons for it.  
16 The need for the United States not to be embarrassed for the  
17 foreign policy objectives. I mean I do, you can think of it in  
18 two different ways. One is the interest of the United States  
19 in its own criminal justice system depends on a certain amount  
20 of reciprocity in the United States' ability to get extradited  
21 from foreign countries like Poland, fugitives from U.S. law,  
22 depends on this kind of reciprocity.

23 And then moreover these treaties are signed in a  
24 framework, you know, in a foreign policy framework, in a sense  
25 that the United States foreign policy interests that are

1 properly managed by different parts of the executive branch at  
2 the State Department. And those interests weigh heavily in  
3 this kind of proceeding.

4 Let me respond to a few of the arguments that Mr.  
5 Ilasz made. I would note here, one thing I would note, Your  
6 Honor, is the courts I think have, I mean not completely  
7 uniformly, but pretty uniformly held that the availability of  
8 bail in the requesting country is really not a relevant  
9 consideration under the special circumstances analysis.

10 And the courts generally held that for a couple of  
11 reasons. One is --

12 THE COURT: Didn't the Kapoor court hold though that  
13 it was a consideration they --

14 MR. HERRING: That's why I said almost all. I'll  
15 give Mr. Ilasz credit. He's certainly familiar with the  
16 minority of cases that are most favorable for his client.

17 THE COURT: Okay.

18 MR. HERRING: And I think that's right, Your Honor.  
19 I think that if you look at the weight of authority and the  
20 reasoning there, I don't think there's a controlling third  
21 circuit decision. But the reasoning there I think is  
22 compelling, which it's a dangerous route for U.S. courts in the  
23 context of a limited extradition proceeding to try to  
24 understand what the bail law is of a country like Poland, and  
25 how it might apply to the specific case.

1           It is often the case the defense is that there is no  
2 mandatory bail for a wide range of crimes and how that plays  
3 out to any particular crime is going to be very difficult for a  
4 court to assess. And really I think should be over weighed by  
5 the special duty that the Court has to deliver the fugitive.

6           And I think the -- I'd also note, Your Honor, that  
7 the, Mr. Ilasz also pointed out there was a delay.

8           And I think that, you know, that the court in the  
9 eastern district court case in Kapoor also discusses this.  
10 He's correct that the papers that we have from the government  
11 of Poland state that there first meet appears to have been in  
12 2005. The first formal request from their government came in  
13 2010.

14           And again, I guess it's a matter of -- it's a little  
15 odd to be standing here and saying I just don't know why that  
16 is, Your Honor. I don't know. Having done -- from this side I  
17 know that it can be a strange and circuitous process. I don't  
18 know how firm the original evidence was in 2005. I think my  
19 underlying position is it's sort of outside the scope of my  
20 role here representing the United States on the extradition  
21 matter.

22           THE COURT: I think that may be right that it's  
23 outside your role. But the evidence was probably, I mean your  
24 allegation is that he essentially admitted to the crime back in  
25 the mid-'90's, so I guess they had all the evidence in 2005,

1 right? It hasn't really changed.

2 MR. HERRING: I certainly -- I was referring to --  
3 right. Because there's nothing, again nothing in the  
4 information that I have says there's any new evidence. I guess  
5 my -- what I don't know is how firm the evidence was of his  
6 location and identity in New Jersey. They clearly had a lead  
7 that he was here in 2005 though.

8 And, you know, in the Kapoor case, which is I said I  
9 think is an outlier, I think it's a bit of an outlier in these  
10 bail cases. And for that reason I caution, I suggest the Court  
11 shouldn't rely on it too much. But there's also a kind of  
12 important distinction there. And I read that decision, you  
13 know there was really a sense there the court seemed to have a  
14 strong sense that the extraditee, the fugitive, had a very  
15 credible claim that this was really a matter of political and  
16 ethnic persecution.

17 And if they had filed, and the judge in Kapoor seemed  
18 to be impressed by the fact that there was already filed an  
19 opposition to deportation under the convention against torture  
20 and other immigration statutes based on this persecution. And  
21 that already filed claim, the court wouldn't go into any  
22 details, but referred to as kind of substantial possibility of  
23 success.

24 And I think that really, you know, the court did a  
25 multi-factor, took several factors into consideration. I think

1 that was an important one that's really not present here for  
2 Mr. Kozlowski. So I think that's an important distinction.

3 And then finally in response to Mr. Ilasz' argument I  
4 do think there is, you know he asks in his letter for, that Mr.  
5 Ilasz asked to have Mr. Kozlowski released then to have the  
6 extradition hearing continued until, while he tries to resolve  
7 it with the Polish government.

8 And I think that is, that would be somewhat of a  
9 dangerous precedent or a dangerous road for this Court to go  
10 down. I think that we don't have any way of knowing -- I don't  
11 have any reason to believe that Mr. Ilasz would have any reason  
12 whatsoever to misrepresent his communications with the Polish  
13 prosecutors. But certainly, you know, the government for one  
14 has a formal request with the government of the United States.  
15 And I am here basically pursuant to that request. And I think  
16 it would be a dangerous road for the Court to go down to wait  
17 or to waive the possibility of some kind of negotiated  
18 resolution directly with the requesting country.

19 I think that that would be very difficult to know  
20 what kind of resolution could happen in Poland as an initial  
21 matter. And I think it would really take the Court outside of  
22 its role in this extradition proceeding.

23 I also have to say this is a matter of common sense.  
24 I think that, you know, I don't know that much about how this,  
25 I know nothing really about how this could be resolved in

1 Poland. And frankly not charged with representing anybody in  
2 that matter. But I think it's, you know, if it is a matter  
3 that is easily resolved in Poland, which it may or may not be,  
4 you know, Mr. Kozlowski, it seems like it would be in his  
5 interest to resolve it as quickly as possible rather than to  
6 continue to drag these proceedings out.

7 And, you know, if it is such a simple matter I do  
8 also have to wonder why he has not resolved it. Why he left  
9 Poland and has not resolved it in the last 20 years or so. But  
10 he may ultimately be correct in which case he can resolve this  
11 easily. But that doesn't release the United States from its  
12 obligations to comply with the terms of the treaty.

13 So, Your Honor, just to circle back to where I  
14 started, really, you know, it's our view that the, this is laid  
15 out in the extradition memo that I filed this morning. The  
16 government has now, has filed the documents that are duly  
17 received according to the treaty from the government of Poland.  
18 And so from our perspective are ready to proceed with the  
19 extradition hearing, which would be, as is usually the case I  
20 understand the government would proceed on those documents and  
21 try to meet the five criteria for extradition. And the ask the  
22 Court to certify to the Secretary of State that Mr. Kozlowski  
23 is extraditable. That would be the next step. And in so far  
24 as Mr. Kozlowski is concerned about delay I think that there's  
25 no barrier to proceeding to that relatively quickly.

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1 THE COURT: All right. Mr. Ilasz, anything in  
2 response?

3 MR. ILASZ: Yes, Your Honor. We had a hearing about  
4 the week and a half ago. And the government was well aware, I  
5 don't know -- Mr. Kozlowski. I really object to any  
6 information Mr. Kozlowski gave to this immigration agents  
7 regarding his --. They're not supposed to talk to him without  
8 me being present or aware of that or he would consent to them.

9 His immigration status for the sake of extradition  
10 proceedings is irrelevant here before this Court. I understand  
11 there is an immigration detainer. And I understand I have to  
12 show up before the immigration judge. And that's what will be  
13 done in due course.

14 THE COURT: But is it true he would be handed over to  
15 the immigration officials after this hearing if we -- if  
16 that's the case in some sense we're going to move as  
17 expeditiously as I possibly can to the actual substantive  
18 proceeding here. And, you know, in some ways if it's just  
19 going to be a change of a place to sit while he waits for that  
20 hearing I imagine Mr. Kozlowski probably wouldn't want that to  
21 happen. I certainly wouldn't. If I was, you know, in one  
22 place and just ferried off to somewhere. I mean, maybe it  
23 makes no never mind, but it's certainly not getting him where  
24 he wants to be by virtue of this proceeding.

25 So in a way it would render this proceeding not moot



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1 but inconsequential. Isn't that right?

2 MR. ILASZ: No, Your Honor. I will now assure this  
3 Court that the question of bail, I mean the bail is more  
4 available in the negotiation part. And I will oppose this  
5 almost as being sure --

6 THE COURT: But my question -- my question to you is  
7 suppose I were to grant your application and afford Mr.  
8 Kozlowski bail, as I understand it now he's going to be  
9 immediately picked up on the ICE detainer.

10 MR. ILASZ: Yes.

11 THE COURT: And you'll make your application. But  
12 that will probably take a little time. And as I said, I'm  
13 interested in getting to the merits of this relatively quickly  
14 for your benefit, for the government's benefit, for everybody's  
15 benefit. I don't want this to hang around for a long time.  
16 I'd rather have it all worked out.

17 And I'm wondering would you even have a chance to  
18 challenge the ICE detainer before we got to our hearing on the  
19 substance of this extradition proceeding. So I'm wondering  
20 practically speaking is this all going to mean very little in  
21 the end.

22 MR. ILASZ: Your Honor, it would mean a lot to us.  
23 And I will tell you I am not -- I prefer not to discuss certain  
24 aspects of his extradition proceedings. But I can tell you one  
25 thing. That what happened, what allegedly happened what he did

1 it was in the small town. Prosecutor claims that he was the  
2 leader of the group. He -- of his coconspirators and he's very  
3 happy that he was seeking, although he doesn't have to Your  
4 Honor, because we solved the case. And I explained to him  
5 about the decision of the supreme court and he's not going to  
6 get him on the basis that he needs to see him because he needs  
7 to allocute his plea. It's not the case.

8 He wants to see him beyond --

9 THE COURT: Just as an --

10 MR. ILASZ: What?

11 THE COURT: Just as an aside, when, I mean you don't  
12 need, I mean the substance of the extradition proceeding is for  
13 another day.

14 MR. ILASZ: Yes.

15 THE COURT: How soon do you think you're going to be  
16 able to, when you tell me that you could get this taken care of  
17 in writing and he might not even have to show, how soon would  
18 you be able to do that? What's your --

19 MR. ILASZ: You are talking about Polish or eviction?

20 THE COURT: Poland.

21 MR. ILASZ: Poland. I will introduce to the Polish  
22 court the plea agreement for the Polish court to approve it,  
23 which the bail is extremely, I mean not the bail, the penalty,  
24 the money is extremely high for Poland. But my client consent  
25 to it.

1           And have the court approve it and ask the court to  
2     take his plea. As all the -- I'm doing, Your Honor, it happens  
3     through the -- the court can use a legal help of Polish counsel  
4     in New York City through the Polish consulate to take the  
5     statement from him. That he is admitting his guilt and he's  
6     paying the penalty and tell him about the probation.

7           He can do this through me. I am appearing in court  
8     with his authorization in Poland. He doesn't want to talk  
9     about it. He says this is the agreement, this is the penalty,  
10    I want to see him here. And I told him I don't see why.

11           THE COURT: And all I'm curious about is how long do  
12    you think that that process will take?

13           MR. ILASZ: Your Honor, it is on the Polish court. I  
14    will act expeditiously. I will write to the Polish court. I  
15    will do this over the weekend. I have a Warsaw office. I'm  
16    going to send my associate to deliver the papers to the Polish  
17    court. And whenever the Judge is at leisure to look at them  
18    and give a decision.

19           And, Your Honor, what is the most important thing, I  
20    see under the circumstances here a potential -- before the  
21    Immigration court for --. I feel that by this given  
22    circumstances I spoke with my client. He's afraid to go back  
23    to Poland. Those people whom, in quotes, he left home because  
24    of --. According to the prosecutor they served time. And  
25    they're upset with him.

1           And I believe behind the stages this is the reason  
2 why the prosecutor insists on him being there personally. This  
3 is my thinking. I have to research this more. See who are  
4 those people who he testified against, where they are, what  
5 kind of file they have, and how they interact with the  
6 prosecution.

7           But there's a professional claim. With the respect  
8 to the Immigration court, Your Honor, I went -- judge. I  
9 explained the judge the proceedings. He's in district court  
10 here. And I asked for bail. And for him being here with the  
11 family for past 20 years the judge asked me, okay, I'm going to  
12 give you the bail, probably it will.

13           What are the basis? What is your immigration relief?  
14 And I'm going to tell him. I have a potential client --.  
15 That's what I'm going to say. If the facts oppose that I  
16 haven't had a chance to talk to him in details, but to date  
17 telephone conversation with the prosecutor make me new thinking  
18 about the whole thing.

19           THE COURT: Well that Immigration judge doesn't  
20 necessarily answer to the same standards that we do when we're  
21 considering bail applications.

22           MR. ILASZ: Your Honor, from my experience unless  
23 there was a crime committed like a crime of the moral turpitude  
24 described in the immigration statute committed in the United  
25 States like drug related offense or murder or

1 very -- the bail is available. They don't, I mean the  
2 Immigration court will keep the bail.

3 THE COURT: No, what I mean, yeah, you may be right.  
4 My only point was though I think that the standards that I am  
5 operating under in the extradition arena are higher standards  
6 than what they would be applying in the --

7 MR. ILASZ: Your Honor, if I am concerned about issue  
8 of the bail it is not the Immigration court, it is your court.  
9 That's the bottom line. I am not worried about the  
10 Immigration. I know from the experience is high likelihood I'm  
11 going to get a bail for him. If Your Honor finds a special  
12 circumstances.

13 And I want to tell you, Your Honor, on the human  
14 side, I went through few cases of similar like his extradition.  
15 I never had a client more sympathetic to the bail and more  
16 safer for the Court to release him than my client is.

17 THE COURT: I've already said that I don't find any  
18 reason to think that he's a danger to the community. And I  
19 don't thing the government does either. And I'm willing to,  
20 you know, I know you offered his family members' testimony.  
21 I'm willing to assume that their testimony would be that he's a  
22 good father, a good husband. And, you know, an important part  
23 of their life and that they would like to have him home. I  
24 understand that.

25 But anything else, Mr. Ilasz?

1 MR. ILASZ: No, Your Honor. It's just I -- that this  
2 is the best possible case to apply the special circumstances in  
3 his favor I've ever had. And I beg this Court that he goes  
4 back to work, take care about his family, while I have a chance  
5 to work with his case in Poland and hopefully to get a happy  
6 conclusion before the Immigration judge.

7 And I think from his moral standard and his life for  
8 the past 20 years he deserves that. Even deserve that  
9 overcoming and serving other people on the AA. I mean, this is  
10 something to tells you about the man and he's doing this pro  
11 bono of course. Thank you, Your Honor.

12 THE COURT: All right. Anything else, Mr. Herring?

13 MR. HERRING: No, Your Honor.

14 THE COURT: All right. Well, you know, this is not,  
15 this is a difficult situation. I appreciate that. I will note  
16 for the record that there are no formal provisions in the  
17 United States Code or the Federal Rules authorizing bail to my  
18 knowledge in extradition matters. And there's a strong  
19 presumption against it. And for that the government has cited  
20 the case, Wright v. Henkle, 190 U.S. 40, 1903.

21 A jurisprudence in this area has developed that bail  
22 will be only granted in international extradition cases where  
23 there is a showing of, where there is a showing that there's no  
24 risk of flight or danger to the community, or not a substantial  
25 risk of flight or danger to the community. And there's also a

1 showing of special circumstances justifying bail.

2 And the risk of danger and flight being the first  
3 inquiry as supported by U.S. v. Romana, 553 F.2d 662. That's  
4 the Eastern District of Texas, 2008. And the showing of  
5 special circumstances being the second inquiry as supported by  
6 Hu Yau-Leung v. Soscia, 649 F.2d 914 (Second Circuit 1981).

7 And the parties appear to be in agreement that those  
8 are the two inquiries that we have to engage in. The danger to  
9 the community and the risk of flight. And then and only then  
10 the question of whether special circumstances exist. I would  
11 note that the burden of showing all of these things in an  
12 extradition case is on the defendant. And that's noted in the  
13 Kapoor case which is a case upon which the defendant has relied  
14 heavily in this proceeding, 2011 Westlaw 2296535.

15 And I would also note that the trial court has broad  
16 discretion with regard to what circumstances or a combination  
17 of circumstances will constitute special circumstances for the  
18 purpose of bail. And that's supported by Beaulieu v. Hartigan,  
19 554 F.2d 1, and that's a First Circuit case from 1977.

20 And the defendant has made many, you know, spirited  
21 arguments regarding the granting of bail urging things like  
22 substantial family ties that show no risk of flight. He's  
23 suggested that there is no danger to the community. And I  
24 agree with that. And I think the government agrees with that.

25 And he's also made some spirited arguments regarding

1 special circumstances. You know, that bail very well may be  
2 available on this offense in Poland. That the delay in Poland  
3 seeking extradition ought to be considered a special factor or  
4 at least part of an overall special factors analysis. And  
5 indeed some of these authorities cited by the defendant  
6 indicate that those are relevant considerations.

7 The defendant cites four, primarily four cases upon  
8 which they rely for authority in support of an order of release  
9 here. There's Hu Yau-Leung v. Soscia, which is 649 F.2d 914;  
10 In the Matter of Extradition of Harshbarger, which is 600  
11 F.Supp.2nd 636, Gouvei v. Vokes, 800 F.Supp. 241; and the  
12 Kapoor v. Dunn case, 2014 Westlaw 1803271.

13 Those cases granted, I think all four of them granted  
14 some form of bail, some form of release pending the extradition  
15 proceeding. And did find special circumstances justifying  
16 release. But apparently bail was granted in those cases after  
17 the court indicated it was satisfied that there was no risk of  
18 flight or dangerousness, which again is our first inquiry under  
19 the applicable case law.

20 The cases do have an interesting discussion of what  
21 might constitute special circumstances and some, like the  
22 Kapoor case in particular, mention that a delay in seeking  
23 extradition might be a part of making a finding of special  
24 circumstances. Bail being available in a foreign country is  
25 certainly addressed in some of those cases.



1 But I find that they're not supportive of release in  
2 this case because they present vastly different situations with  
3 respect to the risk of flight. In those four cases it was  
4 determined either that there was not a concern that there was a  
5 risk of flight or in fact there just was no challenge by the  
6 government to a bail package being accepted by the court.

7 And as noted the risk of flight needs to be  
8 determined before we even go to the special circumstances  
9 analysis.

10 Now in the four cases that the defendant has cited I  
11 would go through each of them. And in the Hu Yau-Leung case,  
12 and I'd like to go through each of them to demonstrate how the  
13 risk of flight is a different situation in those cases than it  
14 is here.

15 In the Hu Yau-Leung case the gentlemen who was being  
16 held and who was granted bail only had charges levied against  
17 him five months after he left Hong Kong for the United States.  
18 In the Harshbarger case there were charges and warrants only  
19 after the defendant came to the United States and in any event  
20 the United States Attorney's Office did not contest bail.

21 In the Gouvei case a sentence was imposed in Portugal  
22 in absentia. And there's no allegation from what I can tell in  
23 the case that there was previous flight from any charges or any  
24 sentencing.

25 And in the Kapoor case even the defendant, the Kapoor

1 case, which is probably the case the defendant relies on most  
2 heavily. In Kapoor the defendant came to the United States in  
3 1999, apparently very shortly after the offending conduct that  
4 the Indian government began to investigate. And a warrant for  
5 her arrest was only issued in 2010, almost 11 years later. It  
6 was not as if she had fled charges or a plea of guilty or a  
7 confession or anything of the sort and had come to the United  
8 States under those circumstances.

9           Again, in all four of these cases the fact that the  
10 people came to the United States was not a direct result of  
11 charges against, charges being immediately leveled against them  
12 and the prospect of imprisonment being right there and  
13 imminent.

14           Here it's different. I mean here we are in this  
15 court. We are entertaining this entire proceeding because the  
16 defendant fled. I mean we have credible evidence that the  
17 defendant was charged. The defendant knew that there were  
18 penalties to pay. The government has indicated that the  
19 defendant as much as confessed to the offenses.

20           And I don't know that the defendant really disputes  
21 there. There's a half-hearted denial in Mr. Ilasz' letter,  
22 but, you know, it's defendant's burden to prove that he didn't,  
23 you know, he's not a risk of flight and given the allegation  
24 that he had confessed to these crimes and was looking at jail  
25 time and then fled because of that, it's very difficult for me

1 to come to the conclusion that he is not a risk of flight at  
2 this point.

3 I understand that 20 years circumstances have  
4 changed. He probably is less of a risk of flight today than he  
5 was in the mid-'90's. He does have a family. He does have a  
6 wife. He does have a community that he lives in. But given  
7 the fact that, again, we're here unlike the cases that are  
8 cited in defendant's brief to the Court, we're here because the  
9 defendant fled the charges and fled, you know, the immediate  
10 threat of punishment.

11 I can't conclude given the high standards that we are  
12 operating under in the extradition arena. I simply can't  
13 conclude that the risk of flight has been dissipated to such a  
14 point that I feel comfortable or that I feel that it's  
15 appropriate to release him pending the substantive hearing on  
16 extradition.

17 I understand that's not what defendant wanted to  
18 hear, not what you wanted to hear, Mr. Ilasz, but I in some  
19 respects believe that, well I conclude that in some respects  
20 given the high standards our hands are tied. I don't think  
21 that it's appropriate that we release the defendant in this  
22 situation. You know a granting bail, I think the government  
23 aptly noted, really doesn't do very much for Poland and Poland  
24 is counting on the United States to abide by its treaty and to  
25 turn over a person that they are seeking for this process.

1           If we grant bail and the bail is skipped Poland --  
2   you know, bail is intended as some sort of recompense to the  
3   government that has not been able to secure the attendance of  
4   the person they're seeking. It won't help Poland at all.  
5   Poland needs to depend on the United States to live up to its  
6   treaty and obligations and to turn over the defendant should  
7   extradition be determined to be the appropriate remedy.

8           And I'm not saying that that's the case at all.  
9   We'll deal with that substantive question at another time. So  
10   that's the decision for now on bail. I'm also, I don't know  
11   that it's changed -- I don't know that it's changed my mind the  
12   information that's brought -- or I can say for sure that it  
13   hasn't changed my mind.

14           I would be deciding this case this way even if the  
15   information on the ICE detainer had not been brought to my  
16   attention. But I do believe that that's a complicating factor  
17   here. And, you know, I hope that we're able to address all of  
18   these things in due course.

19           Now that said, I fully appreciate that detention is  
20   not something that Mr. Kozlowski wants to endure longer than is  
21   necessary. I do not want Mr. Kozlowski to endure detention  
22   here longer than is necessary. I do want to take up the  
23   question of extradition, the substance of extradition as soon  
24   as you two physically think we can do that.

25           The complicating factor for me now, Mr. Ilasz, is

1 your working with the Polish authorities and you think you  
2 might be able to resolve this case with the Polish authorities.  
3 I don't know how soon you can do that. You sound like you  
4 might be able to do that relatively soon, but I guess it's  
5 anybody's guess.

6 What are your feelings on a date for a hearing on the  
7 question of extradition? Given all the concerns that you have  
8 going on right now.

9 MR. ILASZ: The answer is I don't know. I am hopeful  
10 is relatively short time period. I had before my client today  
11 that we establish the penalty that he's facing. There is  
12 question of procedural issue that I explained to the Court how  
13 we going to accomplish it.

14 I do not believe his physical presence is needed  
15 there. That's according to the supreme court decision. The  
16 prosecutor sees this at this time differently.

17 THE COURT: You have competing, I know you have  
18 competing interests here. You don't want to send him to Poland  
19 and you'd like to work it out on the papers. But at the same  
20 time I don't want to hold him here too terribly long on these  
21 charge, you know, on the extradition thing because I am  
22 sensible of the fact that nobody wants to be in detention any  
23 longer than is necessary.

24 MR. ILASZ: Your Honor, I am, I want to be frank with  
25 this Court. I am not sure if he's extradited to Poland this

1 offer will set. Okay? If he's possibly taken to Poland  
2 probably he's going to face jail time.

3 I said to the Polish prosecutor, the Polish  
4 prosecutor is not aware he's in custody or he was detained. I  
5 told him I had a hearing. I didn't explain what kind of  
6 hearing. He doesn't, he's not sure he's detained or not.

7 But he agreed to the penalty. And I want to note  
8 this to the Court, confirm this to the Court, and to the  
9 prosecutor. I don't want him to change his mind. And then I'm  
10 going to wrestle with him over how we're going to accomplish  
11 it.

12 And I was hoping meanwhile he's going to be able to  
13 walk and work once I am trying to accomplish. I will note --  
14 it happened today at 2:00 in the morning, New York time. I  
15 will do the papers this week. Over weekend I'm going to help  
16 my associate, have them fedex it to Polish court which is in  
17 multiple forms. It's a relatively small town.

18 And hopefully, you know, it's also not good for my  
19 client for me to appear desperate about the resolution of this  
20 case because the judge might get a little suspicious or  
21 uncomfortable with me. But I will follow up in due course.  
22 I'm hopeful Your Honor. But it's hard to say. It's from town  
23 to town in Poland -- case laws for those --. So --

24 THE COURT: Mr. Herring, what are your thoughts on  
25 the timing of a hearing? Would you want to talk to Mr. Ilasz

1 and come to a collective agreement on what would be  
2 appropriate?

3 MR. HERRING: I guess, my preference would be to  
4 schedule it, Your Honor, and then see where we can go from  
5 there. I think that, you know, as I said earlier, at this  
6 point I believe I've filed everything the government is going  
7 to file in advance of that hearing and we're going to rely on  
8 those filings. And that's it in terms of the hearing.

9 So I mean we're ready to go very, very quickly. My  
10 sense of it is that I'd like to schedule it now if possible.

11 THE COURT: You want to take a moment and discuss it  
12 with Mr. Ilasz and see if you can come to an agreement? I can  
13 just give you a date, but I'd rather work with both of you to  
14 make it, you know --

15 MR. ILASZ: Your Honor, I can answer to the -- I  
16 following the inclination of this Court. This Court knows what  
17 I'm going to do. Perhaps it would be a better idea if I will  
18 contact Mr. Herring beginning of next week having the papers  
19 sent to Polish court and talking more to the prosecutor.

20 The prosecutor indicated he wants to meet with me  
21 personally beginning of December. And hopefully, I am very  
22 hopeful with all this effort I am putting into this case he  
23 will agree to have this plea taken without Mr. Kozlowski  
24 appearing before the court. But I don't know that.

25 For me the most important thing is to secure his

1 sentence so he won't serve time in Poland. But the less --  
2 there is also, Your Honor, there is an instrument in Polish law  
3 that I can ask the court, which I am going to do, that  
4 guarantee him immunity for the time he comes to Poland and take  
5 the plea.

6 But the problem is, Your Honor, with this resolution  
7 if he leaves the United States he cannot come back because he  
8 was illegally here. So I had a problem with immigration law  
9 that I have to face. So I prefer for him not to leave the  
10 United States, wrestle with the Immigration court if we have a  
11 basis for it. And I will discuss this further with my client.  
12 And hopefully I will do my best.

13 But I am afraid he has to stay in jail for another  
14 month or so. And I will -- I respect, I disagree with this  
15 Court view. I think the best would be grant him here. And I  
16 will take this from here. And I think I will call him, Mr.  
17 Herring, early next week.

18 Maybe there is resolution -- the prosecutor will  
19 receive and read my court papers.

20 THE COURT: Well let me ask you Mr. Herring. You say  
21 you've submitted everything you think you're going to submit in  
22 connection with it?

23 MR. HERRING: Yes, Your Honor. I plan to of course  
24 to review that. But as I understand it's pretty typical in  
25 these cases the way that the government proceeds is to



1 introduce documents that have been provided by the government  
2 of Poland and certified pursuant to U.S. law in the treaty,  
3 which we have. And that's set forth a little bit in the memo  
4 that I just filed which I know the Court hasn't had a chance to  
5 look at yet.

6 And those documents describe the crimes sufficient  
7 for the Court to find really two key things. One is duo  
8 criminality. That it is a crime in Poland and in the United  
9 States.

10 And it states that it is a crime in Poland. And so  
11 the Court is entitled to rely on that. But it's punishable by  
12 more than one year in prison.

13 And the general conduct, the Court then considers the  
14 general conduct described would also be a crime punishable by  
15 more than one year in the United States under either state law  
16 or federal law. And we would submit it's both. It would be a  
17 felony under both.

18 And then the Court would have to find that the duly  
19 admitted documents that were admitted at that proceeding  
20 allowed to find probable cause that the crimes happened. And  
21 then the Court could certify it.

22 THE COURT: All right. Well --

23 MR. HERRING: That's the proceeding.

24 THE COURT: But do we need submissions from the  
25 parties in advance of an extradition hearing?

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1 MR. HERRING: Well the government has already --

2 THE COURT: Further submissions from you?

3 MR. HERRING: I don't unless it's in the nature of a  
4 reply.

5 THE COURT: Okay.

6 MR. ILASZ: Your Honor, I will serve those documents  
7 today at 11:00 in the morning in -- of extradition. I will  
8 oppose the extradition. I will never forgive myself if I let  
9 this guy go to Poland and something happened to him beyond what  
10 the realm of law is. Okay? I'm a little concerned about this  
11 as I explained this to the Court.

12 It would slow time -- Your Honor, to oppose this  
13 request for extradition. And I understand the Court also is  
14 mindful about the fact I have to work on the Polish issue a  
15 little bit. I need a little bit --

16 THE COURT: Lets set some dates. And I'll give you a  
17 little time.

18 MR. ILASZ: All right.

19 THE COURT: And if dates need to be adjusted we'll  
20 adjust them. Mr. Ilasz, if you're going to submit a document  
21 in support, or in opposition to extradition, lets submit that  
22 document by December 5th. In keeping with what we did before  
23 keep it to lets say 10 pages. All right.

24 MR. ILASZ: Ten pages.

25 THE COURT: Mr. Herring, if you're going to respond

1 to that, and Mr. Ilasz was right. We had set a page limit on  
2 the --

3 MR. HERRING: I apologize, Your Honor. I wasn't  
4 aware of that.

5 THE COURT: If you are going to submit a response to  
6 that do it by December 10th. And make it five pages or less  
7 because, you know, you already have submitted substantial  
8 documents.

9 MR. HERRING: I apologize, Your Honor.

10 THE COURT: And we'll set a date for the afternoon of  
11 December 12th. That gives, that's not extraordinarily off in  
12 the future, but it's not tomorrow or the next day. It  
13 hopefully balances Mr. Ilasz' need for a little time with my  
14 concern that Mr. Kozlowski is being detained.

15 And I don't like the -- I don't relish the fact that  
16 he's detained. You know, it's something that I would like to  
17 keep as a short a period as possible.

18 So we'll operate with those dates. If for some  
19 reason they need to change you guys confer and let us know and  
20 we'll consider changing them. And if not we will see you on  
21 the 12th and we'll make a final decision on all of this. All  
22 right?

23 MR. ILASZ: Yes, Your Honor. The only way to change  
24 that if I, because I think the beginning of December I might  
25 fly to Poland. Hopefully this case will be before Polish judge

1 in that time. So I'm going to let you know, we're going to --  
2 a few days --

3 THE COURT: Well if you're flying to Poland then  
4 you're trying to work this out. And you need a few more days  
5 or reschedule, you let us know and we'll consider rescheduling.  
6 You know, the fact that Mr. Kozlowski is being detained though,  
7 I think adds an urgency to all of this. Lets keep --

8 MR. ILASZ: I --

9 THE COURT: -- moving forward as quickly as we can.  
10 All right.

11 MR. ILASZ: Absolutely, Your Honor. But also I don't  
12 want to, because this is a very sensitive case especially with  
13 the Polish government acting the way its acting, I don't want  
14 to do a sloppy job and regret something in the future. So  
15 that's my position. I prefer a little delay than --

16 THE COURT: All right. You keep us apprised.

17 MR. ILASZ: Yes. That's what I will do.

18 THE COURT: As I said, I built in three and a half  
19 weeks. And if you need more time you let the Court know and I  
20 will consider it. All right?

21 MR. ILASZ: Sure, Your Honor.

22 THE COURT: All right. Is there anything else from  
23 the government?

24 MR. HERRING: No, Your Honor. Thank you.

25 THE COURT: Anything else, Mr. Ilasz?

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1 MR. ILASZ: No, Your Honor.

2 THE COURT: All right. Thank you folks. Mr.

3 Herring, can you submit a detention order as well?

4 MR. HERRING: Yes, Your Honor. No problem.

5 THE COURT: Thank you.

6 (Conclusion of Proceedings at 1:41:07 p.m.)

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CERTIFICATION

I, JANICE T. WARNER, Transcriptionist, do hereby certify that the 37 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

S/ Janice T. Warner

Signature of Approved Transcriber

November 21, 2014

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